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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,809	02/27/2004	Joel E. Hitzelberger	380-153	7847
1009	7590	04/18/2007		
KING & SCHICKLI, PLLC 247 NORTH BROADWAY LEXINGTON, KY 40507			EXAMINER TILL, TERRENCE R	
			ART UNIT	PAPER NUMBER
			1744	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/18/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/788,809	Applicant(s) HITZELBERGER ET AL.	
	Examiner Terrence R. Till	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 14-20 is/are rejected.
- 7) ☒ Claim(s) 8-13 and 21-26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/04, 1/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1 and 14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,124,467. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the '467 patent recites, inter alia, a vacuum cleaner, comprising: a canister assembly; a nozzle assembly; a dirt container carried by one of said canister assembly and said nozzle assembly, said dirt container including a collection chamber; a main inlet cavity on said nozzle assembly; at least one edge cleaning inlet on said nozzle assembly adjacent at least one end of said main inlet cavity; a fan and motor assembly for generating said vacuum airstream and moving dirt and debris through said airflow system into said collection chamber said fan and

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motor assembly being carried by one of said canister assembly and said nozzle assembly. Thus, claim 1 of the '467 patent is considered to fully encompass the claimed subject matter of the present application that recites a nozzle assembly; a canister assembly connected to said nozzle assembly; a suction generator (motor/fan) carried on one of said nozzle assembly and said canister assembly; and a dirt collection vessel carried on one of said nozzle assembly and said canister assembly, said suction generator drawing air entrained with dirt through said nozzle assembly to said dirt collection vessel before exhausting clean air back into the environment; said vacuum cleaner being characterized by: said nozzle assembly having a housing including a main cavity and at least one intake opening in fluid communication with said main cavity; and an edge cleaning duct having an inlet adjacent an edge of said housing and an outlet in fluid communication with said main cavity.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Hitzelberger et al. (US 7,124,467)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C.

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102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

5. Hitzelberger et al. discloses a vacuum cleaner, comprising: a nozzle assembly 12; a canister assembly 14 connected to said nozzle assembly; a suction generator 30 carried on one of said nozzle assembly and said canister assembly; and a dirt collection vessel 26 carried on one of said nozzle assembly and said canister assembly, said suction generator drawing air entrained with dirt through said nozzle assembly to said dirt collection vessel before exhausting clean air back into the environment; said vacuum cleaner being characterized by: said nozzle assembly having a housing including a main cavity 32 and at least one intake opening in fluid communication with said main cavity; and an edge cleaning duct 36 having an inlet adjacent an edge of said housing and an outlet in fluid communication with said main cavity.

6. Claims 1-7 and 14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Sovis et al. (US 4,959,885).

7. The patent to Sovis et al. discloses a vacuum cleaner, comprising: a nozzle assembly 10; a canister assembly 60 connected to said nozzle assembly; a suction generator 68 carried on one of said nozzle assembly and said canister assembly; and a dirt collection vessel 124 carried on one of said nozzle assembly and said canister assembly, said suction generator drawing air entrained with dirt through said nozzle assembly to said dirt collection vessel before exhausting clean air back into the environment; said vacuum cleaner being characterized by: said nozzle assembly having a housing including a main cavity 12 with an agitator 14 mounted therein, and

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at least one intake opening in fluid communication with said main cavity; and an edge cleaning duct 40 having an inlet, discrete from the main cavity (see figure 1), adjacent an edge of said housing and an outlet in fluid communication with said main cavity. The housing is considered to have a first section 33 and a second section 42. It is clear that said second section nests with said first section, that said first section includes a first channel 24 defined by a first series of walls, and said second section includes a second channel defined by a second series of walls (see figure 2). By "nest", the examiner is defining this term as the second section (edge cleaning assembly) fitting within the first section (outer shell of nozzle).

***Allowable Subject Matter***

8. Claims 8-13 and 21-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

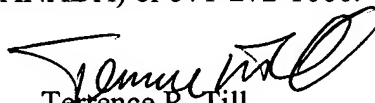
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Edlund, Lofgren and UK patent to Jhuboo show the current state of the art in edge cleaning vacuum cleaners.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrence R. Till whose telephone number is (571) 272-1280. The examiner can normally be reached on Mon. through Thurs. and every other Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys P. Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Terrence R. Till  
Primary Examiner  
Art Unit 1744

trt